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SCARBOROUGH STATION
SCARBOROUGH, NY 10510-0827

SEP 13 2004

In re Application of
Hans-Joachim Fuchs et al.
Application No. 09/895,917
Filed: June 29, 2001
Attorney Docket No. 70231

DECISION ON PETITION

This is a decision on the petition filed April 14, 2004, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is GRANTED.

A restriction requirement was mailed September 25, 2003, without setting a shortened statutory period for filing a response. In the absence of a response, the application was held abandoned and a Notice of Abandonment was mailed April 6, 2004.

Petitioner asserts that a response was timely filed by facsimile transmission on January 26, 2004 together with an Extension of Time for three months. To support the assertion, petitioner submitted 1) a copy of a response entitled "Response to Requirement Under 35 USC §121" dated January 26, 2004, 2) a copy of the Certificate of Transmission under 37 C.F.R. § 1.8(a) dated January 26, 2004, 3) a copy of the Extension of Time for three months dated January 26, 2004 and 4) a copy of the sending unit's report confirming successful transmission of four pages.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, 37 CFR § 1.8(b) provides for accepting a correspondence as being timely filed if it is transmitted in accordance with 37 CFR § 1.8(a), and is reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence: (1) informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware

that the Office has no evidence of receipt of the correspondence; (2) supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and (3) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition, meets the conditions of 37 CFR § 1.8(b) to establish the previous timely filing of the response.

For the above reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn. Inconvenience to petitioner is regretted.

The application file is being forwarded to the technical support staff for processing the Response to Requirement Under 35 USC §121 and the Extension of Time for three months. From there, it will be returned to the examiner for further prosecution.



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